

Statement of Purpose and Authority

Whereas, Massachusetts voters approved the regulation of the use and distribution of marijuana not medically prescribed on November 8, 2016 pursuant to Chapter 344 of the Acts of 2016, as amended by Chapter 55 of the Acts of 2017, an Act to Ensure Safe Access to Marijuana; and amended by Chapter 55 of the Acts of 2017, an Act to Ensure Safe Access to Marijuana; and

Whereas, the prevention of the illegal sale and use of marijuana, particularly involving youth is a public health priority; and

Whereas, the state regulation at 935 CMR 500.000 allows for the lawful local oversight and regulation, including local requirements; and

Whereas, local oversight and inspection of marijuana establishments is within the legal authority of the local boards of health to protect public health, safety and welfare; and

Whereas the Massachusetts Supreme Judicial Court has held that "...[t]he right to engage in business must yield to the paramount right of government to protect public health by and rational means.

Therefore, in furtherance of its mission to protect, promote, and preserve the health and well-being of all Seekonk's residents and pursuant to the authority granted to it pursuant to M.G.L. c.111, §31, the Board of Health of Seekonk enacts a Regulation to Ensure the Sanitary and Safe Operations of Marijuana Establishments in the Town of Seekonk as follows.

Definitions

Unless otherwise indicated, the terms used throughout this regulation shall be defined as they are in 935 CMR 500.00 and in General Law, Chapter 94G, §1,

In addition, for the purposes of this regulation, the following words shall have the following meanings:

Adult-Only Retail Tobacco Store – An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products or offer of services is merely incidental, and in which the entry of a person under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to the issued by the Seekonk Board of Health.

Board of Health – Town of Seekonk Board of Health and its designated board of health.

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Board of Health Agent – The Director of Public Health and any town employees designated by the board of health, which may include health department staff, law enforcement officers, fire officials and code enforcement officials.

Business Agent – An individual who has been designated by the owner or operator of any marijuana establishment to be the manager or otherwise in charge of said establishment.

Edible Marijuana Products – A marijuana products that is to be consumed by humans by eating or drinking.

Marijuana – All parts of any plant of the genus cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C of the General Laws.

“Marijuana” shall not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compounds, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; hemp; or the weight of any pother ingredient combined with marijuana to prepare topical or oral administration, food, drink or other products.

Marijuana Accessories – Equipment, products, devices or material of any kind that are intended or designed for the use in ingesting, inhaling or otherwise introducing marijuana into the human body.

Marijuana Establishment– Any type of adult use marijuana- related business licensed by the Cannabis Control Commission pursuant to 935 CMR 500.050, including a marijuana cultivator, marijuana product manufacturer, marijuana retailer, craft, marijuana cooperative, independent marijuana testing laboratory, marijuana research facility and marijuana microbusiness.

Marijuana Products – Products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use and consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

Operating Permit Holder – Any person engaged in the cultivation, sale, distribution or delivery of marijuana who applies for and receives an operating permit, or any person who is required to apply for an operation permit pursuant to these regulations, or his or her business agent.

Minimum Legal Sales Age - The age an individual must be before the individual can be sold a marijuana product in the municipality.

Non-Residential Roll-Your-Own (RYO) Machine – A mechanical device made available for use (including to an individual who produces rolled marijuana products solely for the individual’s own personal consumption or use) can make rolled marijuana products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO Machines.

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Person – Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to an owner, operator, manager, proprietor or person in charge of any establishment, business, cultivation property or retail store.

Self-Service Display – Any display from which customers may select marijuana or a marijuana infused product without assistance from an establishment.

Vending Machine - Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes marijuana products.

Marijuana Sales to Persons Under the Minimum Legal Sales Age Prohibited

1. No person shall sell marijuana or permit marijuana, as defined therein, to be sold to a person under the minimum legal sales age; or give marijuana products as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Seekonk is 21.
2. Each person selling or distributing marijuana products as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years of age or older.
3. All retail sales of marijuana products shall be face-to-face between the seller and the buyer and occur at the permitted location unless and until delivery of adult-use marijuana products is authorized and licensed under state regulation and then, in strict compliance with all applicable rules and regulation as well as the age of limitations set forth herein.

Marijuana Operating Permit:

1. No person shall sell, cultivate, deliver or otherwise commercially distribute marijuana products, as defined herein, within the town without first obtaining a Marijuana Operating Permit issued annually by the Seekonk Board of Health. Only owners of the establishment with a permanent, non-mobile location in Seekonk are eligible to apply for an operating permit at the specified location in the town and must meet the following application requirements.
 - A. All applicants shall certify that they have obtained a current license with the Cannabis Control Commission and are in compliance with all state and local laws, regulation and be prepared to show proof if requested.
 - B. A marijuana delivery-only establishment, if authorized and licensed under state regulations shall not be required to have a permanent, non-mobile location, but shall have an in-state permanent business office address and contact information available. Upon request, the establishment must share information about the current location and destination of its employees with the Seekonk Board of Health.

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1. No person shall gift marijuana products to a consumer contingent upon the sale of any other products.
2. No person shall accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept any coupon that provides any marijuana product without charge.
3. Provided with the town regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing all employees who will be responsible for marijuana sales regarding federal, state and local laws regarding the sale of marijuana and these regulations.
4. A separate Marijuana Operating Permit, displayed conspicuously, is required for each marijuana establishment. The fee for which shall be determined by the Seekonk Board of Health Annually.
5. A Marijuana Operating Permit is non-transferable. A new owner of a marijuana establishment must apply for a new permit.
6. Issuance of a Marijuana Operating Permit shall be conditioned on an applicant's consent to unscheduled, periodic inspection of his/her marijuana establishment, including any business conducted off-site, to ensure compliance with this regulation.
7. A Marijuana Operating Permit will not be renewed if the permit holder has failed to pay all fines and the time to appeal the fines has expired without an appeal having been filed and/or the permit holder has not satisfied any outstanding permit

Suspensions. If a violation was enforced by non-criminal disposition, any appeal shall be taken pursuant to the Town's General Bylaws and G.L. c. 40 Section 21D.

8. A Marijuana Operating Permit may be subject to non-renewal if the establishment has sold a marijuana product to a person under the minimum legal sales age two times within the previous permit year and the time to appeal has expired without an appeal having been filed. The permit holder may request a hearing pursuant to this regulation prior to non-renewal.
9. No person under the minimum legal sales age shall be permitted to enter the establishment with a Marijuana Operating Permit except those individuals in possession of a registration card demonstrating that the individual is a registered qualifying patient with the Medical Use of Marijuana Program if the establishment is co-located with a medical marijuana treatment center.
10. A retail marijuana establishment shall sell primarily marijuana, marijuana products, and marijuana accessories. The sale of other products must be merely incidental. A retail marijuana establishment is prohibited from applying for or to otherwise holding tobacco sales permit. A retail marijuana establishment is also prohibited from holding a liquor or selling or distributing any alcoholic beverages in any form.
11. All Marijuana Operating Permits expire annually on December 31st.

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Incorporation of 105 CMR 500.000 and CMR 590.000

The manufacture of all edible marijuana products containing marijuana shall be conducted in a state licensed marijuana manufacturing facility and in accordance will all applicable state regulations. Marijuana establishments and agents shall comply with 105 CMR 500.00 “Good Manufacturing Practices for Food” and 105 CMR 590.00, “Minimum Standards for Food Establishments” relative to marijuana products.

Incorporation of 935 CMR 500.00

Marijuana establishments and agents shall comply with all applicable Cannabis Control Commission Regulations 935 CMR 500.00, as well as 105 CMR 500.00 “Good Manufacturing Practices for Food” and “105 CMR 590.00 “Minimum Sanitation Standards for Food Establishments” relative to edible marijuana products.

Out-of-Package Sales

The sale or distribution of edible marijuana products in any form other than the original factory-wrapped package is prohibited, including repackaging or dispensing of any edible marijuana product for retail.

Marijuana Accessories

Marijuana accessories, as defined herein, shall only be sold in marijuana establishments and adult-only tobacco stores as defined herein.

Compliance with All Laws

1. All cultivation, processing, manufacturing, delivery, sale and use of marijuana shall be conducted in compliance with all laws, ordinances, regulation or policies applicable to similar activities. This shall include, but not limited to compliance with food service permit requirements, secondhand smoke regulation, electronic cigarette regulations, nuisance laws and all requirements associated with zoning and other local permitting.
2. The cultivation, processing, manufacturing, delivery, sale and use of marijuana shall not exempt any person or entity from complying with all state and local laws, ordinances, bylaws, regulations and policies. Violations of any other such law, not including federal laws relating to marijuana, shall constitute a violation of this regulation and be subject to fines and penalties described herein. Nothing in this regulation gives any immunity under federal law to poses an obstacle to federal enforcement of federal law.
3. Unless specified by any other state or local requirements as to the hours of operation of a marijuana establishment, the Seekonk Board of Health in consultation with the Seekonk Police Department, and other Seekonk Officials and departments set limitations on the hours of operation of any marijuana establishment.

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4. The Seekonk Board of Health may require the distribution of additional educational materials in marijuana establishments.

Enforcement and Penalties

1. Authority to inspect marijuana establishments for compliance and to enforce this regulation shall be held by the Seekonk Board of Health, its designees and the Seekonk Police Department.
2. Any person may register a complaint under this regulation to initiate an investigation and enforcement with the Seekonk Board of Health, its designees, and unscheduled compliance inspections shall be conducted at a minimum of three inspections annually.
3. If permissible by local bylaws or ordinances, any fines or fees collected under this regulation shall be used for administrative enforcement of this regulation and/or for any activities incidental to this regulation of the operation of marijuana establishments and the sale and use of marijuana.
4. It shall be the responsibility of the Marijuana Operating Permit holder and/or business agent to ensure compliance with all applicable sections of this regulation. Any marijuana establishment found to be in violation of the provisions of these regulations may receive a written warning citation, a fine, a Marijuana Operation Permit suspension, a Marijuana Operation Permit revocation.
5. Any permit holder or any person or entity charged with violation of any provision of these regulations shall receive a notice of violation from the Seekonk Board of Health or its designated agent. Unless waived by the permit holder, the Seekonk Board of Health shall conduct a hearing to determine the facts of the violation, the appropriate corrective actions, the terms of suspension, if any, and/ or issue a permit revocation order.
6. Prior to considering any suspension or revocation, the Board of Health shall provide notice of a hearing, which notice shall contain the reason therefor and establish a time and date for a hearing which date shall be no earlier than 7 days and not later than 45 days after date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reason therefor in writing. After a hearing, the Seekonk Board of Health shall issue a decision within 30 days of the close of the hearing and may suspend or revoke the permit if the Board of Health finds that a violation or violations of this regulation occurred.
7. Alternatively, violations of this regulation may be enforced by non-criminal method of disposition as provided in General Laws Chapter 40, Section 21D Town's General Bylaws. The penalties for violations so enforced shall be no greater than \$2,000 per offense.
8. Each day any violation exists shall be deemed to be a separate offense.

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Variance

1. A variance from this regulation may be requested in writing to the Seekonk Board of Health. A variance may be granted by the Seekonk Board of Health after a hearing at which time the applicant established the following:
 - A. Strict enforcement of this regulation would manifest injustice; and
 - B. The granting of a variance shall not in any way impair the public health and safety or the environment.
2. The Board of Health may impose any conditions, safeguards and other limitations on a variance when it deems it appropriate to protect public health and the safety or the environment.

Severability

If any of this regulation is declared invalid or unenforceable, the provision shall not be affected thereby but shall continue in full force and effect.

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This regulation shall take effect on March 1, 2019



Jonathan Schiller MD, Chairman

Date: 9-9-20

Kyle Corbin DC, Vice-Chairman

Date:



Jill DeMello LICSW, Clerk

Date:

Victoria Kinniburgh RN

Date:



Guy Boulay

Date: 9/19/20

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